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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

NO. 78-969

RANSOM CHARLES and
A. MARVIN KOON,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

J. RANDOLPH HUMBLE,
Valley Fidelity Bank Building,
Knoxville, Tennessee 37902,

Attorney for Petitioners.

SHIELD, RAINWATER & HUMBLE
Of Counsel

JOSEPH J. LEVITT, JR.
713 Market Street
Knoxville, Tennessee 37902

TENNESSEE LAW PRINTERS, P. O. Box 471, Knoxville, Tennessee, Phone 525-4202

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the Judgment and Decision of the United States Court of Appeals for the Sixth Circuit entered on October 20, 1978 which affirmed the convictions of your petitioners for inducing false statements to be made to a government agency in violation of 18 U.S.C., Sections 2 and 1001.

Petitioners claim as fundamental errors and clearly erroneous those portions of the Order and Judgment of the Sixth Circuit Court of Appeals which found without merit the following arguments of your petitioners; (1) That the

Trial Court was in error in overruling the petitioners' Motions for Severance and Election; (2) That the Trial Court was in error in overruling the petitioners' Motions for Judgments of Acquittal.

If the Sixth Circuit Court of Appeals had recognized the merit of any of petitioners' claims as set forth above, it would have reversed the Judgment of the Trial Court and remanded the cause for a new trial.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit, dated October 20, 1978, which affirmed the conviction of your petitioners is attached as an appendix at page 25 hereof.

JURISDICTION

The Order of the United States Court of Appeals for the Sixth Circuit, from which Certiorari is sought, was entered on October 20, 1978. Petitioners filed a Motion For Leave To File A Petition For Writ of Certiorari Out of Time on or about November 18, 1978 and such Motion was granted.

Jurisdiction of the Supreme Court of the United States is invoked under Title 23, U.S.C., Section 2101, and Rule 19(b), of the Supreme Court Rules.

QUESTIONS PRESENTED

The Order, Judgment, and Decision of the United States Court of Appeals for the Sixth Circuit, dated October 20, 1978, from which Certiorari is sought herein, affirmed the Judgment of the United States District Court for the Eastern District of Tennessee, Northern Division.

The questions presented in this Petition are:

1. Should the Trial Court have granted the petitioners' Motions for Severance and Motions for Election?

2. Should the Trial Court have sustained the petitioner's, Ransom Charles, Motion for a Judgment of Acquittal made at the end of the government's proof as to Count One?

3. Should the Trial Court have granted the petitioners' Motions for Judgment of Acquittal as to Count Two of the indictment?

4. Should the Trial Court have granted the petitioner's, Ransom Charles, Motion for a Judgment of Acquittal as to Count Three of the indictment?

CONSTITUTIONAL PROVISIONS

STATUTES

1. Title 18 U.S.C., Section 1001

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statement or representations, or makes or uses any false writing or document knowing the same to obtain any false, fictitious or fraudulent statement or entry shall be fined not more than $10,000.00 or imprisoned not more than five years or both."

RULES

1. Federal Rules of Criminal Procedure, Rule 14, 18 U.S.C.

"If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the Court may order an election or separate trials of counts; grant a severance of defendants or provide whatever other relief justice requires. In ruling on a Motion by a defendant for severance the Court may order for inspection *in camera* any statement or confessions made by the defendants which the government intends to introduce in evidence at the trial."

STATEMENT

I

NATURE OF THE CASE

This Petition emanates from the Order of the Sixth Circuit Court of Appeals which affirmed the convictions of your petitioners for violations of 18 U.S.C., Sections 2 and 1001. The petitioner, Ransom Charles, was indicted in a three count indictment. The petitioner, A. Marvin Koon, was indicted with the petitioner, Charles, but was named in only two counts of the indictment. The cases were tried in the United States District Court for the Eastern District of Tennessee, Northern Division on May 4 and 5, 1977. The specific cha ges upon which the indictments were based were that the defendants had violated 18 U.S.C., Sections 2 and 1001 by aiding and abetting each other in inducing other people to give false loan statements on loan applications to the Veterans Administration and the Federal Housing Authority.

The Sixth Circuit Court of Appeals held that your petitioners' several assignments of error were without merit and did not warrant extended treatment. Such Court

stated that the jury's verdict was supported by substantial evidence, and that the trial judge had not erred in overruling the petitioners' Motion to Sever and Motion to Elect between Different Counts of the indictment. The Sixth Circuit's decision was filed on October 20, 1978.

STATEMENT

II

PERSONS INVOLVED

The Petitioner, Ransom Charles, is a contractor and developer and is a resident of Knoxville, Tennessee. He is currently on bond pending this appeal.

The Petitioner, A. Marvin Koon, is a contractor and a retired veteran of the Marines. He is a resident of Grundy, Virginia. He is currently on bond pending this appeal.

The Respondent, the United States of America, is represented by the United States Attorney for the Eastern District of Tennessee in the Courts below and the Solicitor-General of the United States of America in this Court.

STATEMENT

III

THE CASE

The petitioners were charged in a three count indictment with inducing Gary Long, Larry Claiborne, and Elmer Swafford, to give false statements in loan applications to the Veterans Administration and Federal Housing Authority in violation of 18 U.S.C., Sections 2 and 1001.

The testimony of Gary Long indicated that Long had been approached by the petitioner, Charles, to buy a house. Long made application for the loan. Such application included language stating that the applicant occupied the property or intended to do so. Long denied knowing this. Jane Frazier, however, who took the loan application, stated that Gary Long knew about the requirement of occupany because she told Long of such.

Gary Long testified that he bought a house from the petitioner as a favor to Ransom Charles. Long stated no one explained that he had to live in the house if he bought it. Long stated he never lived in the house and that he did not intend to move into the house when he bought it. However, he said he thought about moving into the house because of his job and because he was having problems with his marriage. Long stated he never made payments on the house. He stated that his wife did not know about the house when he bought it and that she did not sign her name on any papers on which her name appeared. Long stated he was never promised anything by the petitioner, Charles, if he bought the house.

Other testimony pertinent to Count One was that Ransom Charles had paid money to the mortgage company towards the house of Gary Long. Further testimony was that Sarah Hall had signed the name of Flora Long to certain papers as a favor to Ransom Charles. She stated Long did not want his wife to know he was buying the house because he was going to move into the house with another woman.

The evidence on behalf of the petitioner, Charles, as to Count One, was that Long bought the house as a favor to the petitioner because he was having marital problems

and might need a house for that reason, and because he wanted a house closer to his job. Charles stated that Ben White, an employee of his, had rented the home of Gary Long from Long and that as part of White's salary, the petitioner's company had paid the rent on the house.

As to Count Two of the indictment, the testimony was that Larry Claiborne was approached by the petitioner to buy a house and that he did so. Claiborne stated he had no intent to move into the house when he bought it and that his wife never signed any papers concerning the house even though her name was on the loan application. Claiborne's testimony was that the petitioner had told him that the house would be transferred and assumed by someone else after Claiborne bought it. Claiborne said he never made any down payments or paid any closing costs on the house. He said he did think about possibly renting the house and moving into it. Claiborne stated that he never was promised anything, given anything, or threatened in return for buying the house.

Other pertinent testimony relating to the Claiborne matter was that Jean Claiborne stated she did not sign any papers on the property in issue. This testimony was further supported by proof indicating that the petitioner, Marvin Koon, had signed the name of Jean Claiborne to the loan applications.

The evidence for the petitioners as to Count Two included their denials that they had induced Larry Claiborne to buy a house. Charles stated he thought Claiborne lived in a rented house and wanted to buy a house. Charles further stated that he never promised Claiborne anything if he bought the house and that the houses were bought freely and voluntarily. The petitioner, Koon, stated he had

nothing to do with the Claiborne property except taking an application and contract on the house from Claiborne.

The evidence relating to Count Three of the indictment was that Elmer Swafford bought a house from the petitioner, Koon. Swafford stated he did not know the petitioner, Charles, and had never seen him. Swafford stated he never moved into the house or intended to do so. Swafford testified he received compensation from Koon for buying the house although Koon says that any money paid to Swafford by Koon came from work done by Swafford for Koon. Other testimony indicated that the only contact the petitioner, Charles, had with Swafford was that Charles was at the property closing with Swafford. This testimony came from Ed McCampbell. However, Swafford says he never saw the petitioner, Charles.

In response to Count Three, Koon stated Swafford worked for him, and he paid him for such, and that Swafford wanted to buy a house. Koon stated he turned the matter over to a mortgage company. The petitioner, Charles, did not testify as to Count Three.

The jury returned a guilty plea on all counts. Subsequently, Judge Robert Taylor sentenced both defendants to a sentence of a year and one day.

REASONS FOR GRANTING THE WRIT

ISSUE NO. 1: Should The Trial Court Have Sustained The Petitioners' Motion To Sever And Motions For Election?

The Sixth Circuit Court of Appeals erred in affirming the petitioners' convictions by finding no error in the Trial Court's denial of the petitioners' Motions to Sever and Motions for Election.

The indictment against the petitioners contained three counts against the petitioner, Charles, and two against the petitioner, Koon. Before trial the petitioners' attorneys filed Motions to Sever and Motions to Elect. In their Motions, the petitioners stated that the different counts of the indictment alleged different acts, which occurred at different times and places, and which involved different people. Petitioners therefore asked the Court to sever the indictment so that they would not have to be tried at the same time on all counts of the indictment. They also asked the Court to require the government to elect on which count of the indictment they would proceed. Petitioners later renewed their Motions at Trial and the Court again denied such request.

Rule No. 14 of the *Federal Rules of Criminal Procedure* gives the Court the power to sever or to cause the government to elect between counts. Such rule states as follows:

> "If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the Court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the Court may order the attorney for the government to deliver to the Court for inspection *in camera* any statements or confessions made by the defendants which the government intends to introduce in evidence at the trial."

In *McElroy v. United States*, 164 U.S. 76, 17 S.Ct. 31, 41 L.Ed. 355, the Supreme Court dealt with the issue of severance and election. The Court said the following:

"In cases of felony, the multiplication of distinct charges has been considered so objectionable as tending to confound the accused in his defense, or to prejudice him as to his challenges, in the matter of being held out to be habitually criminal, in the distraction of the attention of the jury, or otherwise, that it is the settled rule in England and in many of our states, to confine the indictment to one distinct offense or restrict the evidence to one transaction." *supra*, p. 41 L.Ed. 357.

The Court went on further:

"We do not think the statute authorized the joinder of distinct felonies not provable by the same evidence and in no sense resulting from the same series of acts." *supra*, p.357.

Going further, the Court said:

"Joinder cannot be sustained where the parties are not the same and where the offenses are in nowise parts of the same transaction and must depend upon evidence of a different state of facts as to each or some of them. It cannot be said in such case that all the defendants may not have been embarrassed and prejudiced in their defense, or that the attention of the jury may not have been distracted to their injury in passing upon distinct and independent transactions." *supra*, p. 357.

The Court reversed and remanded.

The petitioners allege that the different counts of the indictment should have been severed or the government should have been required to make an election between the counts. The failure to do so allowed an aura of criminality to develop around the petitioners and created an atmosphere which suggested that the petitioners had committed criminal acts.

In this case, the indictment consisted of three counts. Count One of the indictment was alleged to have occurred on December 30, 1974, and involved one Gary Long. The petitioner, Koon, was not named in Count One. This count charged that the petitioner, Charles, had caused Long to make false statements on a Veterans' Administration Loan application in order to get the V.A. to insure and guarantee a loan. Count Two involved both petitioners and charged that on May 20, 1975, they had induced Larry Claiborne to make false statements on a Federal Housing Administration loan application. Count Three involved both petitioners and charged that on January 17, 1975, the petitioners induced one Elmer Swafford to make a false loan statement on a Veterans' Administration loan. Such occurrence was alleged to have happened in Cleveland, Tennessee. The property involved in all counts was different.

As the indictment clearly shows, the alleged acts supposedly occurred on different dates, at different places, involving different parties and a different state of facts and evidence. The transcript shows that, with the exception of four witnesses, different witnesses were used to prove each count.

In the *McElroy* case, *supra*, the Court said that joinder cannot be sustained, "where the parties are not the same and where the offenses are in nowise parts of the same

transaction and must depend upon evidence of a different state of facts as to each or some of them." *supra*, p. 357.

Whether joinder will be sustained is within the discretion of the Court, *United States v. Kahn*, 381 F.2d 824 (1967). In making a decision on the issue of joinder, the Trial Court is to determine whether a joint trial would infringe upon a defendant's right to a fundamentally fair trial. Such determination is to be based on whether a jury can follow admonitory instructions and separate the different facts and circumstances in order to collate and appraise the evidence relating to each defendant and to the different counts of the indictment, *United States v. Kahn*, p. 839. If the presentation of a case will create an atmosphere of confusion and distract the attention of the jury, then joinder is incorrect. *McElroy*, *supra*, p. 357.

In the case at bar, all the elements which require a severance or election were present. There were separate defendants. There were separately named accomplices or parties to each transaction—Gary Long, Larry Claiborne, and Elmer Swafford. There were different sets of facts requiring different proof and, with the exception of four people, different witnesses. There was no singular transaction, but three separate transactions removed from one another both as to time and as to place.

In prosecuting the case the government used as witnesses to Count One the following: Gary Long, Flora Long, D. O. Sharp, Jane Frazier, Jean Layman, Charles Johnson, Ben White, and Sarah Hall. In prosecuting the case as to Count Two, the government used Larry Claiborne,

Jean Claiborne, James Martin, D. O. Sharp, Jane Frazier, Jean Layman, Randolph Day, and James Lile. As to Count Three of the indictment, the government used Elmer Swafford, Linda Roach, Ed McCampbell, and Charles Johnson. With the exception of witnesses Martin, Sharp, Frazier, and Layman, all the witnesses were different.

In the *McElroy* case the Supreme Court reversed because it said the defendants were joined in trial under indictments which were separate and distinct offenses, "complete in themselves and independent of each other, committed at different times and not provable by the same evidence." Consequently, the Court said that since it could not be said that the defendants were not, "embarrassed and prejudiced in their defense or that the attention of the jury may not have been distracted to their injury in passing upon distinct and independent transactions," the Court would have to reverse. *McElroy*, *supra*, p. 357.

Petitioners allege that due to the presence of different parties, different petitioners and the different sets of facts and transactions involved, it cannot be said that the petitioners may not have been embarrassed and prejudiced in their defense or that the attention of the jury may not have been distracted to their injury in passing upon distinct and independent transactions. *McElroy*, p. 357. Petitioners aver the Trial Court should have granted the petitioners motions for severance or election. Petitioners state that having to defend themselves against multiple charges created an aura of criminality. In trial, the prosecution was able to create the atmosphere of "where there is smoke, there is fire." The petitioners aver there was only one count of the indictment in which definitive and direct proof was presented to show that a violation of the law occurred. Such proof related to

Count Three. The evidence showed that Elmer Swafford stated that the petitioner, Koon, gave him a thousand dollars to buy a house. However, Swafford also stated he did not know and had never met the petitioner, Charles. Therefore, prosecution's best witness says that petitioner, Charles, was not involved. However the petitioner was convicted on Count Three.

The petitioner, Charles, states that such conviction would not have occurred if there had been an election made between the counts. Petitioner states that each count of the indictment contaminated the other and created an aura of criminality. Said petitioner therefore asks this Court to find that the Trial Court committed reversible error in not sustaining his Motion To Sever and Elect. Petitioner Koon joins in this request and states the Trial Court also erred in not sustaining his similar motions.

ISSUE NO. 2: Should The Court Have Sustained Petitioner Charles' Motion For A Judgment Of Acquittal Made At The End Of The Government's Proof As to Count One?

After the government presented their proof concerning Counts One and Two of the indictment, they rested their case. The petitioners forthwith made Motions For Judgments Of Acquittal. The Court denied such Motions.

Count One of the indictment charges Ransom Charles with knowingly and willfully causing a false statement to be made in a loan application by inducing Gary Long to make such false statements. The statements said as follows:

> "I now actually occupy the property identified herein as my home, or intend to move into and occupy it as my home within a reasonable period of time after completion of the loan."

The government contended that Gary Long never occupied, or intended to occupy the premises on which he was making a loan application and that petitioner Charles knew this when he sold him the house.

To determine whether Ransom Charles knowingly and willfully caused a false loan statement to be made by inducing Gary Long to make such statement the government must show Long knowingly made a false statement and that petitioner Charles knew of such falsity or that Charles knowingly induced Long to give a false statement which Long did not know was false. *U. S. v. Van de Carr*, 343 F. Supp. 993, 1002. The best way to determine whether this occurred is to look at what happened between Long and Charles.

Gary Long stated that petitioner Charles asked him to buy a house as a favor. Long stated that petitioner Charles later asked him to help finance the house. Long said Charles asked him to use his Veterans' Administration entitlement and he agreed to do so. Long said he had his own house for sale. He stated it was not his real intention to move into the house. However, Long said he was having marital problems and therefore, he thought he could possibly move into the house. Long stated that no one ever told him that he had to live in the house as a condition for buying the house. However, Jean Layman testified she told Long this.

The record does not indicate that Ransom Charles knew that the Veterans' Administration required a buyer of a house to live in a house they were buying, or to intend to occupy such house. Further, the record does not reflect that Charles told Long that any such requirement existed or that Long told Charles of any such requirement. Long

stated that he did not know of any such requirement even though Jean Layman says she did tell him about this.

Since the record is devoid of any knowledge on petitioner Charles' part that he knew about this requirement of occupancy, it must be assumed that he did not know of such a requirement. Therefore, if he did not know of any such requirement, then he could not induce a person to give a false statement. On appeal, the appellate court can only decide the case based on the evidence produced in the trial below, *U. S. v. Moorehead*, 1 U.S. 488, 17 L.Ed. 80. If there is no evidence introduced on a point, it must be assumed that none existed. Therefore, petitioner Charles states that a person cannot be guilty of inducing a false statement which he is not shown to have known about. The statute requires that one knowingly or willfully gives a false statement. *U. S. v. Van de Carr*, 343 F. Supp. 993, 1002. Consequently, it is logical that under the statute a petitioner could not be guilty of inducing a false statement if he did not know about such statement, or if he was not aware that a person was giving a false statement.

As to Long's knowledge or lack thereof, relating to whether he knew about the occupancy requirement, the record is conflicting. Long says he did not know about such, Jean Layman says that she told him. Nothing in the record indicates that Long told petitioner Charles about this requirement. Therefore, it must be assumed Charles did not know about it. Petitioner Charles therefore states that since he did not know about the statement, he could not be found guilty of knowingly or willfully inducing Long to make a statement he, Charles, knew nothing about. *Van de Carr*, p.100. Thus, if a false statement was made, it was a voluntary act on the part of Long.

Long says he bought the house and signed the papers as a favor to Charles. Charles asked him to buy, and Long voluntarily agreed. The record does not indicate that Long received anything for buying the house.

Induce has been defined as, "to bring on or about, to effect; to lead to or produce; to influence the actions of others by either hope of reward or fear of reprisal." 42 Corpus Juris Secumdum, 1370.

In the case at bar, there was no evidence that Long received any financial rewards for buying the house, or that he was threatened by anyone. There is no evidence that Charles caused, or lead, or influenced Long to make a false statement. Petitioner Charles simply asked Long to buy a house as a favor. Long agreed to buy as a favor. There was no inducement.

The indictment charged Charles with knowingly and willfully inducing a false statement, but the record does not reflect that Charles knew that Long was giving any false statements or that petitioner Charles gave any inducements. Title 18, Section 1001, requires that the defendant knowingly and willfully make a false statement, *U. S. v. Smith*, 523 F.2d 771 (1975), *U. S. v. Carr*, 343 F. Supp. 993 (1972). "Knowingly", as used in Title 18, Section 1001, requires the defendant act with knowledge. "Willfully," requires that the defendant act deliberately and with knowledge. *U. S. v. Smith, supra*; *U. S. v. Markham*, 537 F.2d 187. Petitioner Charles states that the record does not reflect that he acted deliberately and with knowledge to induce Gary Long to make a false statement. Charles, therefore, states that the evidence is insufficient to support his conviction and that the trial judge erred in not granting his Motion for a Judgment of Acquittal.

ISSUE NO. 3: Should The Trial Court Have Granted The Petitioners' Motions For Judgments Of Acquittal As To Count Two Of The Indictment?

Count Two charged Ransom Charles and Marvin Koon with knowingly and willfully causing a false statement to be made by inducing Larry Claiborne to make a false statement on a loan application, to-wit:

> "All charges and fees collected from Larry Claiborne concerning the settlement of property in question were paid by Larry Claiborne. Further, that Larry Claiborne was the occupant of the premises in question."

Larry Claiborne stated he bought the house from Ransom Charles because Charles needed to sell it. Claiborne stated he never intended to live there. He stated he never made any payment on the house and did not know who did. He said he bought the house as a favor to Ransom Charles and was told it would be assumed. He said his wife did not sign any papers. He stated Koon signed some papers. He said Koon did not have anything to do with inducing him to sign any papers. He said petitioner Koon never aided or abetted anybody in inducing him to sign the loan applications.

Claiborne said that he was never told he had to live in the house in order to secure financing for it. He said petitioner Charles never promised him anything, threatened him, or gave him anything. The petitioners state that the record does not show that either one of them induced Larry Claiborne to make a false loan statement. The petitioners state that Larry Claiborne bought a house from Ransom Charles as a favor to Charles and he was

not given anything or threatened. Petitioners therefore state that since no inducement was shown, the petitioners could not be guilty of inducing one to give a false statement.

Induce is defined in Corpus Juris Secumdum as, "to bring on or about; to effect; to lead to or produce; to influence the actions of others by either hope of reward or fear of reprisal." 42 Corpus Juris Secumdum, 1370.

Claiborne admits he received no money or reward for buying the house. He states he was not threatened. Therefore, he was not induced in these ways.

The petitioners, Koon and Charles, state that the record is devoid of any act wherein they induced Claiborne to give a false statement. Claiborne says that Koon never induced him or aided and abetted him to make a loan application. As to petitioner Charles, the record indicates he did ask Claiborne to buy a house. However, the act of solicting Claiborne to buy a house is not an act of inducing Claiborne to make a false statement.

For the petitioners to be guilty, it must be shown they knowingly and willfully induced Larry Claiborne to give a false statement. *U. S. v. Van de Carr*, 343 F. Supp. 993, 1002. The record does not show that Charles or Koon knew that Claiborne would not move into the house or that they told him he would not have to move into the house. Further, the record does not show that either petitioner knew that Larry Claiborne was giving a false statement. Claiborne said he never intended to move into the house he was buying. However, the record does not show that Charles or Koon knew that was a requirement, that they told him that was a requirement of an F.H.A. Loan, or that anyone else did. The record does

not show that Claiborne ever mentioned this requirement to Charles or Koon. Consequently, petitioners state there was no evidence to show that Charles or Koon knew about the requirement and therefore since they had no knowledge, they could not knowingly and willingly cause Claiborne to make a false statement. Consequently, if the petitioners acted without knowledge or did not act deliberately, they could not be guilty. *U. S. v. Smith*, 523 F.2d 771 (1975).

As to any statements about fees paid on the house, Claiborne said he paid none. The record does not show that Koon or Charles told Claiborne that this was a requirement of the loan, or that they knew it was a requirement. Therefore, they contend they could not be found guilty of inducing Claiborne to make a false statement since the record does not show that they knew Claiborne had to sign papers stating he would pay all fees. *U. S. v. Van de Carr, supra*, states that a person must knowingly or willfully violate Title 18 U.S.C., Section 1001. However, if the petitioners did not know a statement was contained in a loan application, they cannot be guilty of knowingly or willfully inducing someone to make such a statement. *U. S. v. Van de Carr, supra*, 1002-1003.

One final point is to be made. The record does not reflect that Koon or Charles knew that Claiborne would not pay the closing fees or live in the house. The record does not indicate that Claiborne told them this. Since the false statement statute, 18 U.S.C., Section 1001, is violated by knowingly making a false statement, the defendants state the evidence must show that they knew about the false statements when Claiborne signed the loan application. *U. S. v. Van de Carr, supra*. However, the record does not reflect such knowledge. Therefore, the

petitioners state that since the record does not show that they knew Claiborne would not live in the house or pay the fees, they could not knowingly and willfully induce him to make a false statement. They therefore state that the Trial Court should have sustained their Motions for a Judgment of Acquittal and ask this Court to reverse the Trial Court's action.

ISSUE NO. 4: Should The Trial Court Have Granted Petitioner Charles' Motion For A Judgment Of Acquittal As to Count Three Of The Indictment?

At the conclusion of the proof, petitioner Charles made a motion for a Judgment of Acquittal as to Count Three of the indictment. The Court denied such motion.

The chief witness for the government as to Count Three was Elmer Swafford, the person who the petitioners, Charles and Koon, were alleged to have induced to make a false loan statement. Swafford testified he did not know petitioner Charles and had never seen him. Swafford said that petitioner Koon caused him to buy a house. Nowhere in the testimony is it shown that petitioner Charles knew Swafford or that he acted in any way to induce or cause Swafford to give any false loan statements.

The indictment charges petitioner Charles with knowingly and willfully aiding and abetting Akron Marvin Koon in inducing Elmer Swafford to make a false written statement. The word induce is defined as including every form of influence and persuasion. *Commonwealth v. Mason*, 106 A.2d 887, 878, 175 Pa. Supp. 576. Elsewhere, induce is defined to mean to bring about, to effect, to cause, and to be persuasive. *Hautau v. Kearney*, 179 F. Supp. 490, 492. Petitioner Charles asserts that nowhere in the testimony is it shown he induced Swafford to do anything.

Assuming that petitioner Charles did not induce Swafford, could he still be guilty as an aider and abettor of Koon? In *White v. United States*, 366 F.2d 474, the Court stated that to be an aider and abettor the defendant must associate himself with a venture, participate in it as something he wishes to bring about and that he seek by his actions to make it succeed. *Supra*, p. 476. In *U. S. v. Bryant*, 461 F.2d 913 (1972), the Sixth Circuit Court of Appeals said that, "knowledge that a crime is being committed, even when coupled with presence at the scene, is generally not enough to constitute aiding and abetting." *supra*, p. 920. The Court said that for a defendant to be guilty as an aider or abettor he must, "act or fail to act with the specific intent to facilitate the commission of a crime by another." *supra*, p. 920.

In this case, as to Count Three of the indictment, there is no evidence that petitioner Charles had knowledge that any crime was being committed by anyone. Swafford says he did not know petitioner Charles and had not seen him. The only testimony which relates petitioner Charles to anything about the Swafford matter came from Ed McCampbell, who said that Charles was at the loan closing in his office. No other connection is shown. Petitioner Charles therefore states that even if it is assumed he was at a property closing involving Swafford there is no evidence to show that he acted with any specific intent and knowledge to cause Swafford to give a false loan statement. For petitioner Charles to be guilty such knowledge and intent must be shown. *Commonwealth v. Mason*, *supra*; *U. S. v. Bryant*, *supra*; *U. S. v. Smith*, *supra*; *U. S. v. Van de Carr*, *supra*. Petitioner Charles therefore avers that his Motion for a Judgment of Acquittal as to Count Three should have been sustained and that the Trial Court's decision should be reversed and the matter dismissed.

CONCLUSION

This Honorable Court now has for consideration a case in which the Trial Court committed four substantial and prejudicial errors. In so doing, the Trial Court violated the petitioners' rights to a fair trial guaranteed by both the United States Constitution and by Acts of Congress. These errors are briefly as follows:

1. That the Trial Court should have sustained the petitioners' Motions to Sever and Motions to Elect. That Rule 14 of the Federal Rules of Criminal Procedure allowed such and required it in this case. That the failure of the Court to do so prejudiced the petitioners by creating an aura of criminality as to the petitioners.

2. The Trial Court should have sustained petitioner Ransom Charles' Motions for Judgment of Acquittal. The evidence did not support the petitioner's conviction because there was insufficient proof to show that the petitioner knowingly and willfully caused Gary Long, Larry Claiborne, or Elmer Swafford to make false loan statements. In fact, as to Elmer Swafford, the testimony of Swafford was that he did not even know the petitioner Charles. Petitioner avers that his motions should have been sustained and the Trial Court committed prejudicial error in not so ruling.

3. The Trial Court should have sustained the petitioner Marvin Koon's Motion for Judgment of Acquittal as to Count Two of the indictment. Petitioner states there was insufficient evidence to show that he knowingly and willfully caused Larry Claiborne to make a false statement. Therefore, petitioner claims his motion should have been sustained.

For all the above reasons, the petitioners ask this Court to grant Certiorari.

Respectfully submitted,

J. RANDOLPH HUMBLE
Attorney for Petitioners

CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Petition for Writ of Certiorari was mailed to the Solicitor-General of the United States of America at the Department of Justice, Room 15614, Washington, D. C. 20530, and to John Cary, United States Attorney, Eastern District of Tennessee, Second Floor, United States Post Office and Courthouse, Knoxville, Tennessee 37901.

J. RANDOLPH HUMBLE
Attorney for Petitioners

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION

UNITED STATES OF AMERICA)
)
v.) CRIMINAL NO. 3-77-40
)
RANSOM CHARLES)
AKRON MARVIN KOON)

(Filed March 25, 1977)

COUNT I

The Grand Jury charges that on or about the 30th day of December, 1974, in the Eastern District of Tennessee, RANSOM CHARLES did knowingly and willfully cause to be made false, fictitious and fraudulent statements and representations in a manner within the jurisdiction of the Veterans Administration, an agency of the United States, in that he induced Gary F. Long, herein named but not herein indicted, a veteran of the United States Army, to make a false written statement as to material facts in a loan application, to wit:

> "I now actually occupy the property identified herein as my home or intend to move into and occupy it as my home within a reasonable period of time after completion of the loan,"

whereas, in truth and fact as RANSOM CHARLES then well knew, Gary F. Long never occupied or intended to occupy the premises located at 9100 Goldleaf Circle, Lot # 13, Block "C", Gulfwood Subdivision, Unit 1, Knox-

ville, Tennessee. The Administrator of Veterans Affairs, in reliance upon the aforesaid statements, did in fact insure and guarantee a loan on the above described property. (Title 18, U.S.C., §§2 and 1001)

COUNT II

The Grand Jury further charges that on or about the 20th day of June, 1975, in the Eastern District of Tennessee, RANSOM CHARLES and AKRON MARVIN KOON, each aided and abetted by the other, did knowingly and willfully cause to be made false, fictitious and fraudulent statements and representations in a matter within the jurisdiction of the Federal Housing Administration, an agency of

[2]

the United States Government, in that they induced Larry Claiborne, herein named but not herein indicted, a veteran of the United States Army, to make a false written statement as to a material fact in a loan application, to wit:

> "All charges and fees collected from Larry Claiborne concerning the settlement of the property in question were paid by Larry Claiborne. (Further that Larry Claiborne was the occupant of the premises in question,")

whereas, in truth and fact as RANSOM CHARLES and AKRON MARVIN KOON then well knew, Larry Claiborne, herein named but not herein indicted, never paid or used any of his own funds in purchasing the property of 9105 Thayer Circle, Lot 9, Block "C", Gulfwood Subdivision, Knoxville, Tennessee, nor did he ever occupy or have any

intention of occupying those premises. The Federal Housing Administration, in reliance upon the aforesaid statements, did in fact insure and guarantee a loan on the above described property.

(Title 18, U.S.C., §§2 and 1001)

COUNT III

The Grand Jury further charges that on or about the 17th day of January, 1975, in the Eastern District of Tennessee, RANSOM CHARLES and AKRON MARVIN KOON, each aided and abetted by the other, did knowingly and willfully cause to be made false, fictitious and fraudulent statements and representations in a matter within the jurisdiction of the Veterans Administration, an agency of the United States, in that they induced Elmer L. Swafford, herein named but not herein indicted, a veteran of the United States Army, to make a false written statement as to material facts in a loan application, to wit:

> "I now actually occupy the property identified herein as my home or intend to move into and occupy it as my home within a reasonable period of time after completion of the loan,"

[3]

whereas, in truth and fact as RANSOM CHARLES and AKRON MARVIN KOON then well knew, Elmer Swafford, herein named but no herein indicted, never occupied or intended to occupy the premises located at 842 Green Hills Drive, Cleveland, Tennessee. The Administrator of Veterans Affairs, in reliance upon the aforesaid statement, did insure and guarantee a loan on the above described property.

(Title 18, U.S.C., §§2 and 1001)

/s/ JOHN L. BOWERS, JR.
UNITED STATES ATTORNEY

A TRUE BILL:

/s/ CHARLES D. ROYLES
FOREMAN

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE,
NORTHERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
vs.	)	Criminal No. 3-77-40
	)	
RANSOM CHARLES and	)	
AKRON MARVIN KOON	)	
Defendants	)	

MOTION TO SEVER

(Filed May 3, 1977)

Come the Defendants through their attorneys and file this Motion for Severance. Defendants would state that they have been indicted under a three-count indictment. That each count of the indictment charges them with a separate and distinct criminal offense. That none of these separate offenses arose out of the same set of facts and circumstances. That each count of the indictment relates to separate charges which allegedly occurred at separate times and places and involve separate persons and witnesses.

The Defendants would state that they would be unduly and unfairly prejudiced if all of these matters were tried at the same time. Defendants' counsel would state that having to try all three matters at the same time makes it extremely difficult to present a defense properly in each of the counts. Further, that having to defend each of the counts at the same time creates a confusing situation in

that there are in effect three sets of witnesses and three sets of facts being presented at one hearing. Such, the Defendants claim, creates an atmosphere of confusion, and that such is unfair and unjust, in that it would require them to make three separate defenses at the same trial.

[A-8]

Defendants would state that this situation might be comparable to trying men for three bank robberies, all of which occurred on different dates, at different places, and with different sets of witnesses. Defendants state that the atmosphere which is created by such a multi-count indictment tends to prejudice the jury and prevents counsel from adequately representing the Defendants on each separate offense. Further, Defendants state that having to prepare such defense denies the Defendants the effective assistance of counsel, as guaranteed by the United States Constitution.

Respectfully submitted,

/s/ JRH
JOHN R. HUMBLE
Attorney for Defendant

/s/ A. Carpenter
ARCHIE CARPENTER
Attorney for Defendant

[A-9]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE,
NORTHERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
vs.	)	Crim. No. 3-77-40
	)	
RANSOM CHARLES and AKRON MARVIN KOON	)	
Defendants	)	

MOTION FOR ELECTION

(Filed May 3, 1977)

Come the Defendants and ask the Court to require and order the United States Attorney to make an election as to which count of the indictment it will proceed upon. Defendants would state that under Rule 14 of the Federal Rules of Criminal Procedure an election is appropriate if it appears that a joinder of offenses would be prejudicial to a Defendant. Defendants would state that because of the fact that the offenses charged in the indictment occurred at different times and places and depend on the testimony of different persons, an election is justified. Defendants therefore ask for the Court to order such an election.

Respectfully submitted,

/s/ JRH
JOHN R. HUMBLE
Attorney for Defendant

/s/ A. Carpenter
ARCHIE CARPENTER
Attorney for Defendant

[A-10]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

UNITED STATES OF AMERICA	:	
	:	
v.	:	CR. 3-77-40
	:	
AKRON MARVIN KOON	:	
RANSOM CHARLES	:	

ORDER

(Filed May 3, 1977)

It is ORDERED that the motions for severance and election be, and the same hereby are, denied.

Enter:

/s/ ROBERT TAYLOR
United States District Judge

NO. 77-5341
NO. 77-5342
NO. 78-5047

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

AKRON MARVIN KOON and RANSOM CHARLES

Defendants-Appellants

ORDER

(Filed October 20, 1978)

BEFORE: WEICK, LIVELY and MERRITT, Circuit Judges.

The defendants were convicted after a jury trial of violating 18 U.S.C. §1001 by inducing other persons to make false statements as to material facts in loan applications to the Veterans Administration and the Federal Housing Authority. On appeal they contend that the evidence was insufficient to support the verdict of the jury and that they were prejudiced by the denial of a motion to sever the charges and elect to proceed against them separately.

Order

Upon consideration of the briefs and oral arguments of counsel together with the entire record and transcript of district court proceedings the court concludes that there was sufficient evidence to sustain the verdict of the jury and that the district court did not abuse its discretion in denying the motion for severance.

[2]

NOS. 77-5341/42
78-5047

Accordingly, the judgment of the district court is affirmed.

ENTERED BY ORDER OF THE COURT

/s/ JOHN A. HEHMAN
Clerk